

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DANNY G.,)	
)	
Appellant,)	2 CA-JV 2009-0040
)	DEPARTMENT A
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ARIZONA DEPARTMENT OF)	Rule 28, Rules of Civil
ECONOMIC SECURITY and)	Appellate Procedure
KRISTOFF G.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18427200

Honorable Suzanna S. Cuneo, Judge Pro Tempore

AFFIRMED

Joan Spurney Caplan

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Pennie J. Wamboldt

Tucson
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Department of Economic Security

ESPINOSA, Presiding Judge.

¶1 Appellant Danny G. challenges the juvenile court’s order terminating his parental rights to his son Kristoff. “[W]e will affirm a severance order unless it is clearly erroneous,” and we “accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶2 Kristoff was born in September 2005. He was living with his mother and her boyfriend in October 2007 when the Child Protective Services (CPS) division of the Arizona Department of Economic Security (ADES) took Kristoff into its custody after receiving a report he had been physically abused. Because Danny’s whereabouts were unknown at the time, ADES served him with a dependency petition by publication. The petition alleged that, although Danny had established his paternity of Kristoff, he had “not supported or visited his child.” In January 2008, ADES located Danny in California and personally served him with the petition. When he failed to appear for a March hearing, the juvenile court adjudicated Kristoff dependent as to Danny.

¶3 In December 2008, ADES filed a motion to terminate Danny’s parental rights on grounds of abandonment and the length of time Kristoff had been in an out-of-home placement. *See* A.R.S. § 8-533(B)(1), (B)(8)(c). A contested severance hearing was held in April 2009. CPS case manager Caryn Strober testified that her first contact with Danny had been in January 2008. She had attempted to secure various reunification services for him in California but had been unable to locate agencies or providers willing to enter into contracts with CPS. She had asked Danny to assist in identifying agencies in his area and setting up

services, and Danny did find an agency to provide parenting classes for him. But he completed only one of the two courses Strober had instructed him to take, and he did not maintain contact with her.¹ Strober's last contact with Danny before the termination hearing had been approximately five months earlier, in October 2008. No other services were put in place during the dependency proceeding, and Danny did not visit Kristoff, provide any financial support for him, or inquire about his well being.²

¶4 An interstate compact³ home study Strober had initiated to evaluate Danny as a possible placement for Kristoff showed that Danny had a history of domestic violence and that his parental rights to three other children had been terminated in California based on substantiated allegations of abuse or neglect. The author of the 2008 home study also reported that Danny had not maintained contact with him during the evaluation process, had failed to provide medical information, and had failed to "complete the fingerprinting process." As a result, "the Los Angeles County Department of Children and Family Services denie[d] the home" as a suitable placement for Kristoff.

¹Strober testified that Danny had provided her with no documentation showing he had completed either parenting class. At the termination hearing, however, Danny produced a certificate of completion for one of the classes.

²Danny did request a visit with Kristoff on one occasion when he had come to Arizona for a court hearing; however, Strober testified that Danny had been leaving the next day and that she had been "unable to set up a supervised visit . . . at that time."

³The interstate compact on the placement of children is codified in Arizona at A.R.S. §§ 8-548 and 8-548.01 through 8-548.06.

¶5 The juvenile court terminated Danny’s parental rights to Kristoff after finding that termination was in Kristoff’s best interests and that ADES had proven the statutory grounds alleged for termination by clear and convincing evidence. Danny contends there was insufficient evidence to support the court’s determinations that he had abandoned Kristoff or that ADES had made diligent efforts to provide him with appropriate reunification services.⁴

¶6 Abandonment is statutorily defined as “the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision” to the child. A.R.S. § 8-531(1). Abandonment “includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child.” *Id.* A parent’s “[f]ailure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.” *Id.* Our supreme court has explained that “abandonment is measured not by a parent’s subjective intent, but by the parent’s conduct: the statute asks whether a parent has provided reasonable support, maintained regular contact, made more than minimal efforts to support and communicate with the child, and maintained a normal parental relationship.” *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 18, 995 P.2d 682, 685-86 (2000).

¶7 In this case, it was uncontested that Danny had had no interaction with Kristoff for at least the seventeen-month period from when ADES had taken custody of the child until

⁴Danny does not contest the juvenile court’s finding that severing his parental rights was in Kristoff’s best interests.

the termination hearing. It was also uncontested that Danny had provided no financial support for Kristoff during that same period. Indeed, there is no evidence in the record that he had ever established a parental relationship with Kristoff, and evidence existed that Danny had abandoned him. The record amply supports the juvenile court's determination that any efforts Danny had made to maintain a relationship with his son, which appear to have consisted of sending some holiday gifts to Kristoff in 2008, were merely "token" efforts.

¶8 To the extent Danny suggests illness provided just cause for his failure to develop or maintain a relationship with Kristoff, the record does not support that contention. Danny testified he suffered from a terminal kidney condition that had resulted in seven hospitalizations over the six-month period preceding the severance hearing and thus had interfered with his ability to visit his son, but he offered no evidence to corroborate his testimony. He had not provided requested medical information to the home-study investigator, and he made no attempt to explain his absence of at least one year from Kristoff's life before the claimed hospitalizations had taken place. Nor does he explain his failure to support Kristoff financially. In his opening brief, he merely complains that CPS never asked him about his ability to do so, yet he admits he had been working part-time.

¶9 Finally, the record does not support Danny's suggestion that CPS had failed to inform him what he needed to do in order to gain custody of Kristoff. Strober testified about her communications with Danny, some of which were also documented in the report she had submitted to the juvenile court for the permanency hearing, and the record includes a copy of a letter she wrote to Danny fully explaining his responsibilities regarding the

parenting classes she had instructed him to take. Although Danny correctly points out that Strober had failed to send him a letter the court had ordered her to write “describ[ing] what [Danny] need[ed] to do regarding services,” Strober testified she would not have “said anything in that letter that [she] hadn’t already said to [Danny] previously.”

¶10 Next, Danny contends ADES failed to make diligent efforts to provide appropriate reunification services. Although he acknowledges that providing reunification services “is not a specific statutory mandate” under § 8-533(B)(1) when termination is sought on the ground of abandonment, he claims “ample Arizona case law” requires the provision of such services before a parent’s rights may be terminated based on that ground.⁵ The cases on which he relies, however, do not directly support his position. In *Mary Ellen C. v. Arizona Department of Economic Security*, 193 Ariz. 185, 971 P.2d 1046 (App. 1999), severance was sought based on the mother’s mental illness. See § 8-533(B)(3). And, although *Arizona Department of Economic Security v. Mahoney*, 24 Ariz. App. 534, 540 P.2d 153 (1975), concerned termination of a mother’s rights on the grounds of abandonment and neglect, that case is factually and procedurally distinguishable from this one. More recently, we have stated that “neither § 8-533 nor federal law requires that a parent be provided

⁵ADES must make diligent efforts to provide appropriate reunification services before a parent’s rights may be terminated pursuant to § 8-533(B)(8)(c); however, we may affirm a termination order if any one statutory ground for termination has been sufficiently proven. See *Michael J.*, 196 Ariz. 246, ¶ 12, 995 P.2d at 685 (“To justify termination of the parent-child relationship, the [juvenile] court must find, by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533”); *Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205 (“If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.”).

reunification services before the court may terminate the parent’s rights on the ground of abandonment.” *Bobby G. v. Ariz. Dep’t of Econ. Sec.*, 219 Ariz. 506, ¶ 11, 200 P.3d 1003, 1007 (App. 2008); *see also Toni W. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 61, ¶¶ 7-9, 15, 993 P.2d 462, 465, 467 (App. 1999) (in absence of existing parent-child relationship, ADES need not provide reunification services before seeking termination based on abandonment).

¶11 Nevertheless, we note that ADES did make efforts to locate services for Danny in California and that he did not take full advantage of those services or follow up on attempts to locate other services. Further, at no time during the dependency did Danny request additional services or object to the juvenile court’s multiple findings that ADES was making reasonable efforts to reunify him with Kristoff.

¶12 Because the juvenile court’s determination that Danny had abandoned Kristoff is supported by the record, we affirm the termination order.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

JOHN PELANDER, Judge